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Natural Justice, Law, and Virtue in Hobbes's *Leviathan*

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Abstract

Scholars debate whether Hobbes held to a command theory of law or to a natural law theory, and to what extent they are compatible. Curiously, however, Hobbes summarizes his own teachings by claiming that it is “natural justice” that sovereigns should study, an idea that recalls ancient virtue ethics and which is seemingly incompatible with both command and natural law theory. The purpose of this article is to explicate the general significance of natural justice in *Leviathan*. It is argued that below the formal and ideological claims regarding the law’s legitimacy, the effective ground of the legitimacy of both the civil and natural laws is sovereign virtue. In turn, it is argued that the model for this idea was found in Aristotle. As such, this article constitutes a general recasting of Hobbes’s legal philosophy with a focus on the natural person of the sovereign.

Keywords

Hobbes – law – virtue – command – Aristotle – natural justice

1 Introduction

The crowning lesson of Thomas Hobbes’s *Leviathan* (1651) is that sovereigns should commit themselves to the study of “natural justice” because it is the ultimate normative foundation of both the civil and natural laws. Likely, this claim strikes the student of Hobbes’s legal philosophy as absurd. The term “natural justice” suggests the political and ethical philosophies of the ancients—specifically Aristotle’s virtue ethics—while Hobbes’s contribution was in

turning away from these categories. The scholarly debate concerns whether Hobbes defended some form of command or natural law theory (or a combination). Those defending the command theory of law interpretation hold that individuals can speak of subjective attractions as “good” and aversion as “evil,” but that “just” and “unjust” are contrivances of artificial sovereign power manifested in the civil laws.¹ Internal to this critique are important questions regarding the nature of that command and its ultimate source.² But in any case, the idea of natural justice is held as oxymoronic, and it is never entertained that sovereign command is rooted in the virtues of the natural person(s) who bear the office of sovereignty. Natural law interpretations often agree that justice is an output of sovereignty. However, they reject that Hobbes’s discussion of the natural law is insignificant, holding instead that the natural laws give pre-political normative grounding to the civil law.³ These normative motivations are variously ascribed to rational or theological sources, but never to natural justice. Many intermediary positions have tried to reconcile these seemingly incompatible interpretations, but not in a fashion that addresses (or resolves) the question of natural justice.⁴

- 1 This is the “orthodox,” “traditional,” or “standard” view of Hobbes as a forefather of legal positivism. See Gregory S. Kavka, *Hobbesian Moral and Political Theory* (Princeton University Press, 1986); Jean Hampton, *Hobbes and the Social Contract Tradition* (Cambridge: Cambridge University Press, 1986); Norberto Bobbio, *Thomas Hobbes and the Natural Law Tradition* (University of Chicago Press, 1993), 96.
- 2 Throughout, I will refer to this general school of thought as the “command theory.” But a note on the difficulties of that term is in order. Hobbes is neither a positivist, understood in H.L.A. Hart’s sense (“Positivism and the Separation of Law and Morals,” *Harvard Law Review*, 1958, 593–629), nor a command theorist, in John Austin’s sense (*Austin: The Province of Jurisprudence Determined* (Cambridge: Cambridge University Press, 1995). Austin expresses this himself (229–34, note 22).
- 3 A.E. Taylor, “The Ethical Doctrine of Hobbes,” *Philosophy* 13, no. 52 (1938): 406–424; Howard Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation* (Oxford: Oxford University Press, 2000); Aloysius P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press, 2002).
- 4 S.A. Lloyd, *Morality in the Philosophy of Thomas Hobbes: Cases in the Law of Nature* (Cambridge: Cambridge University Press, 2009) (although Lloyd ultimately asserts that the natural laws are “self-effacing” and subsumed within the civil laws and sovereign command); Perez Zagorin, *Hobbes and the Law of Nature* (Princeton University Press, 2009); Evan Fox-Decen, “Hobbes’s Relational Theory: Beneath Power and Consent,” in *Hobbes and the Law*, ed. David Dyzenhaus and Thomas Poole (Cambridge: Cambridge University Press, 2012), 118–44; David Dyzenhaus, “Hobbes and the Legitimacy of Law,” *Law and Philosophy* 20, no. 5 (2001): 461–498; Dyzenhaus, David, “Hobbes on the Authority of Law,” in *Hobbes and the Law*, 186–209;

Which brings me to the puzzle. The seemingly absurd position that sovereigns must be philosophers of natural justice is the concluding claim of the second part of *Leviathan*, almost verbatim.⁵ What are we, then, to make of the fact that in the final paragraph of the political part of *Leviathan*, Hobbes gives pride of place to an idea that appears incompatible with his own ideas regarding the nature of law (civil and natural) and, indeed, the nature of sovereign power? Deepening the puzzle, in *De Cive* (1642), Hobbes expressly rejects natural justice, setting his own accounts of the civil and natural laws—indeed, setting his whole civil science—against this ancient idea.⁶ And yet, in *Leviathan*, Hobbes removes each negative reference to natural justice and adds four positive references and multiple affirmative allusions to it.

Scholars have rarely commented on the significance of natural justice in *Leviathan*, so a preliminary word on this subject is in order. Presumably, scholars use one of three excuses to dismiss natural justice. First, they could claim that it is synonymous with natural law. Second, natural justice could be dismissed as an inconsequential slip of the pen in *Leviathan*. As I will show, neither of these claims withstands scrutiny. Hobbes does not conflate the ideas of natural law and natural justice, and he is precise and consistent in his deployment of the idea. The third explanation is that Hobbes is merely referring to his schema of science where of “just” and “unjust” are a branch of contracts, which is a branch of speech, which is ultimately a branch of “natural science.”⁷ Hence, natural justice refers to the study of contracts. However, Hobbes never uses the term “natural justice” to refer to the justice of contracts (though Hobbes certainly uses the term “justice” in contracts both as an output of a law of nature and as made practicable by the arbitrary power of the state). As I will show, Hobbes usually uses the phrase where sovereigns (or their deputies) must act when there are no contracts to guide their actions.⁸

Michael Cuffaro, “On Thomas Hobbes’s Fallible Natural Law Theory,” *History of Philosophy Quarterly* 28, no. 2 (2011): 175–90.

5 Thomas Hobbes, *Leviathan*, ed. Noel Malcolm, *The Clarendon Edition of the Works of Thomas Hobbes* (Oxford: Oxford University Press, 2012), 574.

6 In *A Minute or First Draught of the Optics* (1646) Hobbes remarks that his *De Cive* was the first true science of natural justice (*The English Works of Thomas Hobbes of Malmesbury*, vol. VII [Longman, Brown, Green, and Longmans, 1845], 471). He appears to mean that it is a science of virtues and vice, stripped of its ancient connotations.

7 Hobbes, *Leviathan*, 130–32.

8 The only comprehensive account of natural justice’s significance in *Leviathan* is found in Leon Harold Craig, *The Platonic Leviathan* (Toronto: University of Toronto Press, 2010). Craig argues that the idea of natural justice, among many other paradoxes in *Leviathan*, esoterically signals Hobbes’s philosophical affinities with Plato. I have certainly been

What follows is a study of natural justice in *Leviathan* and its implications for understanding Hobbes's legal philosophy. I make three arguments. First, I argue that the natural laws are, in political practice, contingent on the instantiation of natural justice and, unlike the negative duties delineated in natural law which apply to all, natural justice speaks to a positive moral duty of the natural person of the sovereign.⁹ The natural laws do not make reference to natural justice, but they are practically—that is, politically—contingent upon the instantiation thereof. Second, I argue that although the positive laws formally derive from the command of the sovereign, their ultimate legitimacy is sourced from the character of the natural person (or persons) who bear the office. Third, extending and uniting the first two arguments, I argue that the shared determination of the political legitimacy of the natural and civil laws by instantiations of natural justice—as found in the exemplary moral character of the natural person of the sovereign—is made evident in Hobbes's discussion of law in the exceptional moments in a commonwealth's life.¹⁰ These

emboldened in my study by Craig's work, but my critique differs in two ways. Clearly, I am not taking Platonism as my interpretative guide, instead asserting a direct link to Aristotle (these interpretations may not be incompatible). Specifically, Craig focuses on Plato's discussion of kingship while I focus on Aristotle's discussion of magnanimity. Furthermore, the paradoxes I address are not essential to *Leviathan*. Instead, they only appear to be paradoxes. In fact, Hobbes is consistent in his use of the term and it is the orthodox interpretations that are wrong—at least, so I will argue.

- 9 On the natural person of the sovereign, see Gabriella Slomp, "The Inconvenience of the Legislator's Two Persons and the Role of Good Counsellors," *Critical Review of International Social and Political Philosophy* 19, no. 1 (2016): 68–85; Tom Sorell, "Hobbes and the Morality beyond Justice," *Pacific Philosophical Quarterly* 82, no. 3–4 (2001): 227–242; "The Burdensome Freedom of Sovereigns," in *Leviathan after 350 Years*, ed. Tom Sorell and Luc Foisneau (Clarendon Press, 2004), 183–96.
- 10 Many have argued that Hobbes's intention was to pivot political philosophy away from virtue ethics. See Leo Strauss, *The Political Philosophy of Hobbes: Its Basis and Its Genesis* (Chicago: University of Chicago Press, 1952); Laurie M. Johnson Bagby, *Thomas Hobbes: Turning Point for Honor* (United Kingdom: Lexington Books, 2009); Christopher Scott McClure, "War, Madness, and Death: The Paradox of Honor in Hobbes's *Leviathan*," *The Journal of Politics* 76, no. 1 (2014): 114–125. Others disagree. See David Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue* (Cambridge: Cambridge University Press, 1994); R.E. Ewin, *Virtues and Rights: The Moral Philosophy of Thomas Hobbes* (Westview Press, 1991); Quentin Skinner, *Reason and Rhetoric in the Philosophy of Hobbes* (Cambridge: Cambridge University Press, 1996), 11; on modesty specifically, see Julie E. Cooper, "Vainglory, Modesty, and Political Agency in the Political Theory of Thomas Hobbes," *The Review of Politics* 72, no. 2 (2010): 241–269; on magnanimity, see Andrew J. Corsa, "Thomas Hobbes: Magnanimity, Felicity, and Justice," *Hobbes Studies* 26, no. 2 (2013): 130–51; on obligation and sovereign virtue, see J. Matthew Hoyer, "Obligation and Sovereign Virtue in Hobbes's

arguments make up the three subsections, respectively, of Part III. They are preceded in Part II by an explication of the idea of natural justice in Aristotle, and Hobbes's critique thereof in *De Cive*. Part IV brings the article to a conclusion with a brief note on the unity of his seemingly divergent legal philosophical claims.¹¹

2 Natural Justice in Aristotle and Hobbes's *De Cive*

Aristotle's discussion of natural justice is found primarily in book V of *Nicomachean Ethics* and book III of *Politics*.¹² Justice, Aristotle begins in *Ethics*, can be broadly understood as anything that "tends to produce or to preserve happiness and its constituents for the community of a city."¹³ As such, justice is

Leviathan," *The Review of Politics* 79, no. 1 (2017): 23–47. On the moral virtues as an output of natural law, see Bernard Gert, "The Law of Nature as the Moral Law," *Hobbes Studies* 1, no. 1 (1988): 26–44; *Hobbes: Prince of Peace* (Cambridge: Polity Press, 2010).

- 11 A note on my interpretation is in order. I will make a strong claim that natural justice is an essential aspect of a full account of Hobbes's philosophy of law. This is certainly not a standard claim, and as Hobbes only mentions "natural justice" four times in *Leviathan*, it may initially appear to be almost absurd, as I have mentioned already. After all, it could be asserted that had Hobbes believed this aspect of his thought to be important to his legal philosophy, he would have given it more emphasis. What, then, explains the discrepancy between Hobbes's apparently sparse treatment and my strong claim? A large part of it, I believe, has to do with intended audiences. I am assuming a political reading of Hobbes, one that assumes Hobbes was concerned with both the politics of ruling and the politics of being ruled. The politics of natural justice are usually in the background, and in the day-to-day life of a regime, neither the law nor the people are much concerned with the character of sovereign's natural person. However, in exceptional moments—foundations, emergencies, war, international crises, civil tumult, or other exigencies where the natural person of the sovereign is put in the front and center of politics—these politics are crucial. Those different politics must be kept separate. Rulers need to prepare for the latter, and the ruled need to be disciplined to abide during the former. This is an "esoteric" reading in a political sense, but as a diverse range of commentators have noted, there are very good reasons for taking this interpretative approach. See Craig, *Platonic Leviathan*, Chap. 17; Jeffrey R. Collins, *The Allegiance of Thomas Hobbes* (Oxford University Press, 2007), 33.
- 12 The idea of natural justice in Aristotle has been a constant point of contention in the literature. See Richard Kraut, *Aristotle: Political Philosophy* (Oxford University Press, 2002), 125–32; Susan Collins, *Aristotle and the Rediscovery of Citizenship* (New York: Cambridge University Press, 2006), 81–90.
- 13 Aristotle, *Nicomachean Ethics*, ed. Roger Crisp (Cambridge: Cambridge University Press, 2004), 1129b19–21.

“complete virtue” realized both in relation and regard to others.¹⁴ Aristotle then proceeds to examine different manifestations of justice. The discussion opens with a consideration of what he calls the “geometric” (or distributive) and “arithmetic” (or rectificatory) forms of justice. These forms of justice pertain to justice of transactions and, broadly speaking, the private sphere, or “household justice.” These forms of justice turn on questions of equity, and their logics apply universally. Insofar as it is a virtue, justice as equity is a function of finding the mean (“mean,” here, being used in the arithmetic sense). Hence the role of judges as mediators of private disputes.¹⁵

Political justice refers to the justice of constitutions. For Aristotle, constitutions represent the socio-political normative order of the governing class. As a political virtue, justice relates to relationships between ruled and rulers, and can only be manifested by those who rule, as they must attend to the polity.¹⁶ Virtuous rulers rule for the sake of all, while a corrupt ruler “exercises his wickedness in relation to himself and in relation to his friends.”¹⁷ Uncorrupted regimes manifest the highest virtues of the governing class in an other-regarding concern for the people as a whole (polities, aristocracies, monarchies). Corrupted regimes tend to the needs of the rulers alone (democracy, oligarchy, or tyranny).¹⁸

Political justice comes in two types: legal justice and natural justice. Legal justice refers to conventional justice, a broad idea that delineates both constitutions and laws. Roughly, this is the realm of what today would be called the civil laws. Natural justice, Aristotle writes, refers to that which is universally just, which “is what has the same force everywhere and does not depend on people’s thinking.”¹⁹ Natural justice is not the justice of equity and reciprocity standing as a universal model for the evaluation of situations of exchange or private relationships.²⁰ Rather, it is a universal “force,” a virtue of action. Aristotle notes that this idea is itself curious, as legal justice is different from one city to the next, while natural justice purports to speak to that which is unchanging.²¹

14 Aristotle, *Nicomachean Ethics*, 1129b30–34.

15 Aristotle, *Nicomachean Ethics*, 1132a20–25.

16 Aristotle, *Nicomachean Ethics*, 1129b35–30a8.

17 Aristotle, *Nicomachean Ethics*, 1130a9–10.

18 Aristotle, *Nicomachean Ethics*, 1134a33–b2.

19 Aristotle, *Nicomachean Ethics*, 1134b22–3.

20 Aristotle, *Nicomachean Ethics*, 1130a17–34a20.

21 Aristotle, *Nicomachean Ethics*, ll. 1134b20–39. See also Aristotle, *On Rhetoric: A Theory of Civic Discourse*, trans. George A. Kennedy, 2nd ed. (Oxford: Oxford University Press, 2006), 1373b–4a.

If natural justice is, as Aristotle writes, everywhere the same, why is it not practiced everywhere? And why does legal justice differ so markedly from one polity to the next? Aristotle's answer is that natural justice is not a universally normative force, because it requires special human instantiation. What makes natural justice universal (like fire, to use Aristotle's analogy), is not that it is manifest in written laws or logically true in mathematical laws. He writes: "things that are not just by nature, but are just for a particular group of people, are not the same everywhere, since political systems are not the same either." To Aristotle, natural justice is universal because it is the only form of virtuous rule that "is naturally the best everywhere."²² It is best because it promotes a general human happiness obtainable by all communities, irrespective of the *particular* virtues of each uncorrupted regime type.

In *Politics*, Aristotle writes that it is in the nature of every regime to evolve toward the type of justice entailed in their respective constitutions. Justice, on this first account, is defined by the virtues that demarcate the ends of the city:

political communities must be taken to exist for the sake of noble actions, and not for the sake of living together. Hence those who contribute the most to *this* sort of community have a larger share in the city-state than those who are equal or superior in freedom or family but inferior in political virtue, and those who surpass in wealth but are surpassed in virtue.²³

Having reflected on the nature of correct and corrupt regimes, Aristotle writes "that those who dispute about constitutions all speak about a *part* of justice."²⁴ The problem at hand is that the constitutional basis of every regime type is *ipso facto* only a part of justice, specifically the part that relates to the limited virtues of those who rule. Hence, Aristotle arrives on the constitutional register at the analogous ethical problem of just citizens and just men found in *Ethics*: the figure of exemplary virtue who stands in dissonance to all constitutional orders and yet whose justice is unparalleled. This is the constitutional backdrop of Aristotle's discussion of the magnanimous man.

These figures pose obvious problems for corrupt regimes. But they pose more interesting problems for correct regimes. "In the case of the best constitution," Aristotle writes, "there is a considerable problem, not about superiority

²² Aristotle, *Nicomachean Ethics*, 1135a1–7.

²³ Aristotle, *Politics*, trans. C.D.C. Reeve, Cambridge (Indianapolis: Hackett Publishing Company, 1998), 1281a2–6.

²⁴ Aristotle, *Politics*, 1281a9–10.

in other goods, such as power or wealth or having many friends, but when there happens to be someone who is superior in virtue.”²⁵ The problem is that the conventional justice of the regime cannot encompass the extraordinary virtue of the magnanimous man. Aristotle speaks of “one person or more than one” who is/are “so outstanding by reason of his superior virtue that neither the virtue nor the political power of all the others is commensurable with his.” This figure transcends and gives definition to their regime: “such men can no longer be regarded as part of the city-state.”²⁶ Aristotle writes that this person (or “*these persons*,” as it is not merely a discussion of kingship, but also a discussion of rule) would “*reasonably be regarded as a god among human beings*.”²⁷ Whereas the law regulates the actions of the greatest part of humanity. For “the other sort,” Aristotle writes “*there is no law, since they themselves are law*.”²⁸ Note also that Aristotle appears to hold that the superlative virtues of this ruler (or these rulers) are of a different order than the virtues of the polity which takes its orientation from the conventional mean.

This form of regime is neither an unlisted seventh species of the six delineated regime types outlined by Aristotle, nor is it a variant of monarchy. It is of a different genus.²⁹ The difference lies in the moral hierarchy of constitutions, rulers, laws, and ruled. Under all six regime types, rulers are understood as properly subordinate to constitutions, and the ruled subordinate thereto. By contrast, Aristotle is speaking of a different hierarchy between laws, constitutions, and rulers. If a particularly virtuous agent is recognized as surpassing the virtues of all others combined, “people would not say that such a person [or persons] should be expelled or banished, but neither would they say that they should rule over him.” Thus, Aristotle speculates as to what this regime would look like: “The remaining possibility—and it seems to be the natural one—is for everyone to obey such a person gladly, so that those like him will

25 Aristotle, *Politics*, 1284b25–8.

26 Aristotle, *Politics*, 1283b40–4a17. On the exceptional nature of this regime, see W.R. Newell, “Superlative Virtue: The Problem of Monarchy in Aristotle’s ‘Politics,’” *The Western Political Quarterly* 40, no. 1 (1987): 159–78; Thomas K. Lindsay, “The ‘God-Like Man’ versus the ‘Best Laws’: Politics and Religion in Aristotle’s ‘Politics,’” *The Review of Politics* 53, no. 3 (1991): 488–509.

27 Aristotle, *Politics*, 1284a10 [italics added].

28 Aristotle, *Politics*, 1283b40–4a17 [italics added].

29 Andrés Rosler, “Civic Virtue: Citizenship, Ostracism, and War,” in *The Cambridge Companion to Aristotle’s Politics*, ed. Marguerite Deslauriers and Pierre Destrée (New York: Cambridge University Press, 2013), 155.

be permanent kings in their city-states.”³⁰ This figure—who stands apart from the commonwealth and is not bound by the law, but from whom both conventional conceptions of justice as well as constitutional norms are derived—establishes their power by way of their exemplary virtue. Indeed, Aristotle holds that everyone would take it to be naturally just that these individuals rule over the constituted polity. It is a form of political ostracism *in reverse*, where the people banish themselves from ruling, so as to be ruled.

Which brings me to Hobbes's response to Aristotle in *De Cive* (1642). In *De Cive*, Hobbes flatly rejects the idea of natural justice. Indeed, he casts his own political science as intending to confront and supplant the idea. Hobbes mentions natural justice twice in *De Cive*. Each offers different accounts of the term. In the epistle dedicatory, Hobbes addresses the concept of natural justice as passed down by the Aristotelians. In Chapter v, he addresses the natural justice of some animals. Each of these discussions informs a different critique, and each critique speaks to two different manifestations of natural justice also found in Aristotle: the first as it pertains to rule, the second as it pertains to being ruled.

Hobbes notes in *De Cive* that he began his own studies by following the classical humanist path, and “applied my Thoughts to the Investigation of Naturall Justice.”³¹ However, breaking from his humanist moorings, Hobbes's interest turned away from natural justice to the nature of justice.³² Hobbes discovered that justice was indeed, as some of the ancients asserted, the “steady Will of giving everyone his *Own*.”³³ However, it proceeded “*not from Nature*, but Consent,” specifically consent to sovereign power.³⁴ Justice, to Hobbes, is an artifice. This discovery allowed Hobbes to see that natural justice was an oxymoronic idea built upon the “*false and empty shadow*” of “aristotelity,” and as such an unsuitable foundation upon which to construct moral and legal philosophies (let alone commonwealths). Instead, “*there are no authenticall*

30 Aristotle, *Politics*, 1284b25–34. Many commentators have framed this issue as one of kingship only, see Collins, *Aristotle and Citizenship*, 132–46; Robert C. Bartlett, “Aristotle's Science of the Best Regime,” *American Political Science Review* 88, no. 1 (1994): 143–155. Aristotle is clear, however, that this is a general problem superseding the six regime type schema.

31 Thomas Hobbes, *De Cive: English Version*, ed. Howard Warrender, vol. III of *The Clarendon Edition of the Philosophical Works of Thomas Hobbes* (Oxford: Clarendon Press, 1983), 26.

32 On Hobbes's humanism and break therefrom, see Skinner, *Reason and Rhetoric*. Cf. Ted H. Miller, *Mortal Gods: Science, Politics, and the Humanist Ambitions of Thomas Hobbes* (Penn State Press, 2011).

33 Hobbes, *De Cive*, 27.

34 Hobbes, *De Cive*, 27 [italics added].

doctrines concerning right and wrong, good and evill, besides the constituted Lawes in each Realme, and government."³⁵

Hobbes's second criticism of natural justice, in Chapter v of *De Cive*, speaks directly to Aristotle's discussion of the "justice" of some animal communities. Hobbes asserts that Aristotle's model is grounded upon another epistemological confusion. Although the "government" of bees and ants is a type of consent, it is based on the natural correspondence of their individual desires and the desires of the whole. "But among men," Hobbes writes, "the case is otherwise."³⁶ History begins with the invention of words. Words are anthropologically transformative because they constitute the epistemological foundation for mediated socialization, thereby enabling vainglory, disagreement, and public contestation.³⁷ It is because of the invention of words that natural justice has no bearing on human justice. Hobbes writes that "the consent of those brutall creatures is naturall, that of men by compact onely, (that is to say) artificiall; it is therefore no matter of wonder if somewhat more be needfull for men to the end they may live in peace." Thus, Hobbes continues, "Wherefore *consent*, or contracted *society*, without some common power whereby particular men may be ruled through feare of punishment, doth not suffice to make up that security which is requisite to the exercise of *naturall justice*."³⁸ The prose is strained, but Hobbes's point is that whatever the nature of human covenants, they depend upon sovereign power, and natural justice is neither its basis nor its output. Justice does not have an ontological standing outside of the law. Hobbes writes: "Before there was any government, *just* and *unjust* had no being."³⁹ Justice is born of the legitimate commands of sovereigns.

3 Natural Justice in Leviathan

In *Leviathan*—responding to the civil war—Hobbes removes every negative mention of natural justice and asserts positively that future sovereigns should

35 Hobbes, *De Cive*, 31.

36 Hobbes, *De Cive*, 87.

37 Hobbes, *De Cive*, 87–88.

38 Hobbes, *De Cive*, 88.

39 The quotation continues: "...their nature onely being relative to some command, and every action in its own nature is indifferent; that it becomes just, or unjust, proceeds from the right of the Magistrate: Legitimate Kings therefore make the things they command, just, by commanding them, and those which they forbid, unjust, by forbidding them; but private men while they assume to themselves the knowledge of *good* and *evill*, desire to be even as Kings, which cannot be with the safety of the Common weale" (Hobbes, *De Cive*, 146–47).

commit their studies to natural justice above all else. Hobbes does this while reasserting elements of both the positive and natural law claims, augmenting the critique of Aristotelian metaphysics and its ideological offshoots, and retaining his anthropological critique of Aristotle's claim that humans are naturally political.⁴⁰ Hobbes uses the term "natural justice" four times over three chapters in *Leviathan* (XXVI, XXX, and XXXI), each at crucial intervals and speaking to different permutations of the same idea.⁴¹ These permutations correspond to the relationship between natural justice and natural law, civil law, and sovereignty respectively.

3.1 *Chapter XXVI: Natural Justice and Natural Law*

The first perspicuous reference to natural justice in *Leviathan* is in Chapter XXVI, where Hobbes turns his attention back to the authority of the civil laws in relation to the natural law. In Chapters XIV and XV, Hobbes writes of natural laws as prudential (sometimes seemingly deontic) rationalizations regarding the means to achieve peace. There, Hobbes frames the discussion within the state of nature/civil society binary, the function of which is to stylize his core claims. In Chapter XXVI, Hobbes's concern is more concrete and pragmatic. Hobbes begins by restating his earlier claim that the force of law stems neither from custom nor tradition, but from the express will of the sovereign. He also revisits his position that law is command (not counsel), and that this force encompasses the laws of nature.⁴²

Hobbes then arrives at the so-called containment thesis:

The Law of Nature, and the Civill Law, contain each other, and are of equall extent. For the Lawes of Nature, which consist in Equity, Justice, Gratitude, and other morall Vertues of these depending, in the condition of meer Nature ... are not properly Lawes, but qualities that dispose men to peace, and to obedience.⁴³

This thesis has always been held as problematic, and it is in light of these issues that Hobbes first comes to endorse the idea of natural justice. To arrive there, the elements of the containment thesis must be considered more closely, and specific attention has to be paid to the seemingly simple question of how the

40 Hobbes, *Leviathan*, 258–60.

41 On natural justice and natural law in *Leviathan*, see Craig, *Platonic Leviathan*, Chap. 15.

42 Hobbes, *Leviathan*, 416–18.

43 Hobbes, *Leviathan*, 418. See also Ross Harrison, "The Equal Extent of Natural and Civil Law," in *Hobbes and the Law*, ed. Dyzenhaus and Poole, 22–38.

laws are known at all, and then known to contain each other. The civil law must be made manifest. "The Law is a Command," Hobbes writes,

and a Command consisteth in declaration, or manifestation of the will of him that commandeth, by voyce, writing, or some other sufficient argument of the same, we may understand, that the Command of the Common-wealth, is Law onely to those, that have means to take notice of it.⁴⁴

Part of this claim concerns capacity. Those without the natural capacities to understand the law—"naturall fooles, children," "mad-men," "brute beasts"⁴⁵—cannot be bound by the laws, because they are incapable of internalizing the commands of the sovereign. By the same token, they are not bound by natural law. This claim also regards cognizance; laws cannot be passed in secret and must be promulgated and propagated.⁴⁶ It is less clear how the laws of nature are promulgated, and it on this question that Hobbes returns to the topic of natural law.

In Chapter XIV, Hobbes writes that the natural laws are precepts "found out by Reason, by which a man is forbidden to do, that, which is destructive of his life, or taketh away the means of preserving the same; and to omit, that, by which he thinketh it may be best preserved."⁴⁷ In this early exposition of natural law, it appeared that all agents could deduce the laws of nature by way of reason and their private dispositions to secure their own well-being. In these chapters, and in both *Elements* and *De Cive*, the natural laws are characterized as being eminently and autonomously deducible by way of one's own reason. This explication is rhetorically augmented by the overarching framework of the state of nature/civil state logics. In Chapter XXVI, Hobbes shifts the explication away from the hyperbolic casting of the state of nature/civil society problematic and in doing so sheds significant light on the practical meaning of the term. Hobbes advances the discussion by showing that there are three ways (and an implied fourth) in which the laws of nature can inform the actions of agents. The first speaks universally to subjects in general, the second to judges, the third to those ambassadors who, as exceptional agents, must act where the civil laws do not speak. (I return to the fourth—the natural person of the sovereign—in the third section of this part.)

⁴⁴ Hobbes, *Leviathan*, 422.

⁴⁵ Hobbes, *Leviathan*, 422.

⁴⁶ Hobbes, *Leviathan*, 422. On this idea see Dyzenhaus, "Hobbes on Authority of Law."

⁴⁷ Hobbes, *Leviathan*, 198.

Hobbes's first claim is that citizens cannot deduce natural laws from convention or by way of reflections on their own subjective egoism. Instead, citizens arrive at the laws of nature by reflecting upon their own place in the world in relation to others. It is a thought experiment wherein one puts oneself in another's place and considers how they would act.⁴⁸ Doing so checks subjective egoism by prompting agents to consider what another agent could do to make collective action possible.⁴⁹ This does not presuppose a natural moral communitarianism; it simply prompts the individual to consider the objective egoism of people in general.⁵⁰ In temperate times, the moiety should tend towards equal treatment and forbearance. That is, "*Do not that to another, which thou thinkest unreasonable to be done by another to thy self.*"⁵¹ Hobbes calls the resulting outputs "convenient Articles of Peace, upon which men may be drawn to agreement."⁵²

Clearly, however, these natural laws aren't entirely, or usually, persuasive. And even accepting that the civil laws "contain" the natural laws, the facts on the ground indicate that this conjunction is not sufficient to maintain peace at all times. Thus, Hobbes's second answer is more interesting. Turning to situations where exceptional agents are charged with undertaking indeterminate duties—e.g. judges, ambassadors—while upholding the "Sovereigns interest,"⁵³ Hobbes broaches the topic of natural justice for the first time. For agents who do not have the civil law to guide their actions, Hobbes proposes a different thought experiment. Instead of imagining what another *citizen* should do, these agents must consider the abstract ends of sovereignty (and sovereigns). Judges (who must apply general laws to specific cases) must assume equity as their guiding principle.⁵⁴ As Dyzenhaus notes "Hobbes regards

48 On this idea see S.A. Lloyd, "Hobbes's Self-Effacing Natural Law Theory," *Pacific Philosophical Quarterly* 82, no. 3–4 (2001): 285–308.

49 Hobbes, *Leviathan*, 424.

50 On reciprocity in Hobbes, see Lloyd, "Hobbes's Self-Effacing Natural Law Theory."

51 Hobbes, *Leviathan*, 424; see also 240. Zagorin mistakenly calls this the golden rule. A golden rule is an affirmative rule to act irrespective of how others act. What Zagorin is referring to is the silver rule, to withhold from acting. Contrastingly, Gregory Kavka takes note of this principle—"do unto others as they do unto you"—and likewise identifies it as the golden rule, only to say that it is better described as the "copper rule" (*Hobbesian Moral and Political Theory*, 347). See also Boonin-Vail, *Thomas Hobbes and the Science of Moral Virtue*, 139–45.

52 Hobbes, *Leviathan*, 196.

53 Hobbes, *Leviathan*, 424.

54 On equity as an overarching principle in Hobbes, see Zagorin, *Hobbes and Law of Nature*; Larry May, *Limiting Leviathan: Hobbes on Law and International Affairs* (Oxford: Oxford

subordinate judges as under a duty to the sovereign to interpret his positive law as if it complied with the laws of their nature.”⁵⁵ In the interpretation of laws, the judge interpolates cases through the negative duties of natural law. At this juncture, it is evident how the positive law and the natural law could “contain” each other, as all laws are themselves restrictions of some natural right. However, as Hobbes makes clear, he is patently not Aristotelian in his understanding of equity.⁵⁶ To him, it is the judge’s duty to apply the idea of equity to clarify the civil laws as delineated by the formal offices of sovereignty. Hence, the question of “containment” is not, in fact, resolved because the ultimate referent for judges remains the artificial institutions of sovereignty (it will be resolved in Chapter XXXI). However, Hobbes points toward the answer. Which brings me to Hobbes’s important discussion of ambassadors who are duty bound to obey the sovereign, but who (unlike judges) have no official duties ascribed to them or laws to guide them.

Hobbes writes that the ambassador is “to take for Instruction that which Reason dictates to be conducing to his Sovereigns interest; as so of all other Minsters of the Sovereignty, publique and private.”⁵⁷ This is where Hobbes’s discussion of natural justice is broached for the first time. Hobbes begins by describing the unique thought experiment performed by ambassadors and other ministers. He describes it as following the special “Instructions of naturall Reason” that he calls “*Fidelity*,” which “is a branch of *naturall Justice*.”⁵⁸ What does natural justice mean here? Consider three points. First, in contrast to the role of judges and the institutionally circumscribed thought experiments they use to guide the administration of civil justice, ambassadors are expected to reflect upon the positive “interests” of the sovereign. This, by itself, is interesting, because it marks a conspicuous shift away from the basic cognitive process through which the natural laws are established. The second point regards the identity of those interests. Here, Hobbes provides two answers. One is found in his clarification of his claim in the Latin edition of *Leviathan*. There, Hobbes distinguishes between natural justice as “the good” of the commonwealth and

University Press, 2013), Chap. 6; Larry May, “Hobbes, Law, and Public Conscience,” *Critical Review of International Social and Political Philosophy* 19, no. 1 (2016): 12–28; cf. Tom Sorell, “Law and Equity in Hobbes,” *Critical Review of International Social and Political Philosophy* 19, no. 1 (2016): 29–46.

55 Dyzenhaus, David, “Hobbes on Authority of Law,” 197.

56 See Johan Olsthoorn, “Hobbes’s Account of Distributive Justice as Equity,” *British Journal for the History of Philosophy* 21, no. 1 (2013): 13–33.

57 Hobbes, *Leviathan*, 424.

58 Hobbes, *Leviathan*, 424 [italics added].

natural law as “equity.”⁵⁹ In this example, natural law is again depicted as a universal *negative duty* in contrast to natural justice as an exceptional *positive duty* defined by its other-regarding motivations (these motivations will be taken up in the next section). The logics of equity are subordinated to “the good” of the commonwealth, *not* the evils of the state of nature.⁶⁰ Third, the term “fidelity” points us to a broader consideration of these exceptional figures throughout *Leviathan*. Hobbes uses the term “fidelity” four times in *Leviathan*, each referring to exceptional moments outside of civil society where agents must interpolate what is good for the commonwealth.⁶¹ In each case, semi-exceptional agents—counselors, “potent subjects,” public ministers, commanders, ambassadors—are charged with considering not the negative duties of their neighbors, but the positive virtues of their sovereign. Natural justice, in sum, points us towards a notion of justice which cannot be deduced from the state of nature/civil society thought experiment, and which is also not found in written in the civil laws. None of the above tells us anything substantive about the identity of natural justice, but it does delineate it from natural law.

I can now restate the rebuttal to the counter-argument that by “natural justice” Hobbes simply means natural law. Hobbes is not speaking here of “a Precept, or general Rule, found out by Reason, by which a man is forbidden to do, that, which is destructive of his life.”⁶² Instead, Hobbes unequivocally holds that natural law is a branch of (subordinate to) natural justice. Natural law may apply to all equally, but in every instance Hobbes uses the term natural justice, it refers to unique figures in the commonwealth’s political apparatus who are charged with implementing the sovereign’s will, but have not been commanded one way or the other.

3.2 Chapter xxx: *Natural Justice and the Command Theory of Law*

The second striking aspect of natural justice in *Leviathan* is that it prefigures not only natural law, but positive laws as well, while also being a necessary precondition to effectively apply both types of law. In Chapter xv, Hobbes writes that “Law, properly is the word of him, that by right hath command over

59 Hobbes makes this point even more clearly in the Latin version: “an ambassador is to take for his instructions the good of the commonwealth, and a judge to take what he thinks equitable. For the commonwealth is understood to wish both good for itself, and equity for its citizens” (*Leviathan*, 425).

60 Sorell, “Law and Equity,” develops a similar argument on this, however he does not make the link to natural justice or virtue ethics.

61 Hobbes, *Leviathan*, 410, 424, 516, 550. On the topic of fidelity, see Hoye, “Obligation and Sovereign Virtue,” pt. iv.

62 Hobbes, *Leviathan*, 198.

others.”⁶³ However, as noted, it would be disingenuous to categorize Hobbes as merely claiming that the law’s identity stems from the coercive power implied by the sovereign’s command. Generally, it is accepted that there must be some foundation to the civil laws beyond mere command. Hobbes offers a few possible explanations: the social covenant, the problem of the state of nature, and, prominently, the idea of “obedience for protection.” Broadly speaking, these “standard” interpretations all reduce to the egoistic thesis that it is in one’s self interest (one of the strengths of Hobbes’s argumentation regarding the legitimacy of the law is exactly that it provides so many overlapping self-interested reasons for obeying the law). As Chapter XVIII makes clear, the point of the social covenant is peace, the laws keep the peace, and no matter how oppressive the laws may feel, they are themselves self-authored and any condition within a civil society is better than life outside of it. This is the essence of the *de facto* theory of obligation in Hobbes and it, along with the contractual logics it presupposes, are the foundations for the Hobbesian version of the command theory of law. None of these arguments—or any variants thereof in the literature—make logical or necessary reference to natural justice or, more generally, the virtues of the sovereign.

And yet, despite all of this, Hobbes admits in Chapter xxx to another condition, an exception to the *de facto* rule, which rests upon the idea of natural justice and points to considerations of the character of the natural person of the sovereign.⁶⁴ He begins by restating his earlier claim. “The OFFICE of the Sovereign,” Hobbes begins, “consisteth in the end, for which he was trusted with the Sovereign Power, namely the procuration of *the safety of the people*; to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him.”⁶⁵ However, Hobbes continues: “by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt

63 Hobbes, *Leviathan*, 242.

64 Hobbes, *Leviathan*, 254.

65 Hobbes, *Leviathan*, 520. I have assumed for the sake of clear explication that the “natural person of the sovereign” is a single individual, ergo a monarchical regime. However, this is not necessarily the case. The argument holds for both aristocracies and democracies. (Note that this is true for Aristotle too, who asserted that the natural rule of the large-souled would normally be one person but could be many. Hobbes holds that the sovereignty—the “Soule of the Common-wealth” pictographically represented in the frontispiece as evidently large, i.e. magnanimous—could be manned by one, the few, or the many as well.) Certainly, the odds of there being so many great-souled people in a commonwealth make the odds of having more than one figure in any commonwealth exceedingly low.

to the Common-wealth, shall acquire to himself.”⁶⁶ Here, Hobbes's hedge is crucial. (I will address the role of God in Hobbes's discussion of natural justice in the next section.) Specifically, Hobbes is avoiding the *de facto* claim that protection alone confers obedience and expanding the scope of what safety entails. This initial hedge announces a series of discussions that challenge the straightforward accounts of the command theory of law in Chapter xxx, which in sum reveal that the command theory simply cannot stand on its own.

One discussion regards a sovereign command manifest in a hypothetical law that commands citizens to fight in a war. (The passage in question speaks of “rebellion,” however in the previous paragraph Hobbes defined “rebellion” as “all resistance to the essentiall Rights of Sovereignty”⁶⁷ including resistance to commands relating to “making Warre, or Peace” and levying soldiers.⁶⁸) Hobbes writes that the law would be essentially vacuous: “the grounds of these Rights [of the sovereign], have the rather need to be diligently, and truly taught; because they cannot be maintained by any Civill Law, or terrour of legall punishment.”⁶⁹ The stakes are existential: “For a Civill Law, that shall forbid Rebellion ... is not (as a Civill Law) any obligation, but by virtue onely of the Law of Nature, that forbiddeth the violation of Faith; which naturall obligation if men know not, they cannot know the Right of any Law the Sovereign maketh.”⁷⁰ I will return to the question of “faith” and “natural obligation,” but first consider the negative implications. Legal punishments against rebellion are worse than useless. Hobbes writes that in assuming the uselessness of a positive command to fight, the negative punishment for not fighting will be understood by citizens not as a command but as “an act of Hostility”⁷¹ upon citizens by the sovereign. Such a law would amount, it is implied, to a veritable civil war initiated by the sovereign. A law that says one must fight in a war or be punished for not fighting is, in effect, a *de facto* abdication of actually-existing sovereignty.

Returning to the notions of faith and natural obligation. Natural obligation and faith, it turns out, are closely related. Hobbes's discussion of this conjunction changed from *De Cive* to *Leviathan*. So, it is worth starting there. In *De Cive*, Hobbes wrote the natural obligation stems from our “conscience of our own

66 Hobbes, *Leviathan*, 520. Compare to Aristotle: “It comes to be for the sake of living, but it remains in existence for the sake of living well” (*Politics*, ll. 1252b14–6).

67 Hobbes, *Leviathan*, 522.

68 Hobbes, *Leviathan*, 520.

69 Hobbes, *Leviathan*, 522.

70 Hobbes, *Leviathan*, 522.

71 Hobbes, *Leviathan*, 522.

weaknesse.”⁷² On that account, the command theory of law holds because of the de facto and overwhelming power of the sovereign. In sharp contrast, in *Leviathan* the “weaknesse” that Hobbes has in mind is not defined by its relationship to fear. Instead, it refers to another natural power which is somehow related to faith and hope. Faith in what? Hobbes first gestures towards reason, but immediately acknowledges that this is not the case (“But supposing that these of mine are not such Principles of Reason; yet I am sure they are Principles from Authority of Scripture”⁷³). Hobbes then points the reader towards a fascinating discussion of the Mosaic covenant in Chapter XL and Moses’s authority which depended in part “merely upon the opinion they had of his Sanctity.”⁷⁴ But we need not look so far ahead. Hobbes had already defined what he means by faith: “when wee believe any saying, whatsoever it be, to be true, from arguments taken, not from the thing it selfe, or from the principles of naturall Reason, but from the Authority, and good opinion wee have, of him that hath sayd it; then is the speaker, or person we believe in, or trust in, and whose word we take, the object of our Faith; and the Honour done in Believing, is done to him onely.”⁷⁵ The implication is that natural obligation and faith are different expressions of the tendency for the multitude to naturally adhere to eminent individuals. In the case of the law’s basis in sovereign command, the question rests on one’s faith in the sovereign whose commands constitute the laws of the land. That is what Hobbes means when he writes that “naturall obligation if men know not, they cannot know the Right of any Law the Sovereign maketh.”⁷⁶ The formal legitimacy of the law as sovereign command is not in question, neither is the de facto power of the sovereign, but the personal legitimacy, or that natural authority of the commander is.

Another account of the command theory of law in Hobbes focuses on how sovereign commands are underwritten by the logics of the social covenant, not simply by the de facto power of the sovereign. Not only does protection demand obedience, the argument goes, but disobedience is *ipso facto* absurd. As Hobbes writes in Chapter xv, “The Foole hath sayd in his heart, there is no such thing as Justice.”⁷⁷ One reason for this is that one “cannot be received into any Society” if one does not observe the justice of contracts.⁷⁸ In Chapter xxx,

72 Hobbes, *De Cive*, 187.

73 Hobbes, *Leviathan*, 522.

74 Hobbes, *Leviathan*, 740.

75 Hobbes, *Leviathan*, 102.

76 Hobbes, *Leviathan*, 522.

77 Hobbes, *Leviathan*, 222.

78 Hobbes, *Leviathan*, 224.

Hobbes asks a different version of this question relating to the rights of the sovereign: "As I have heard some say, that Justice is but a word, without substance ... So there be also that maintain, that there are no grounds, nor Principles of Reason, to sustain those essentiall Rights, which make Sovereignty absolute."⁷⁹ Hobbes's reflections on this topic unfold over Chapters XXX and XXXI. However, his initial claims indicate that the straightforward social covenantal arguments in support of the command theory expressed in earlier chapters are not as strong as he had previously attested. Hobbes first acknowledges that the logical arguments for the social contractual underpinning of the law as sovereign command seem to fail on historical grounds, since they would presumably have been discovered already had they evoked simple rational truths of political organization. The perpetual revolution of regimes up to Hobbes's day attests to that not being the case.⁸⁰ However, for Hobbes that does not mean that such a form of justice is impossible, only that it has not yet been realized.⁸¹ Noting that this is true for the sovereigns of his day, he insists that if a *future* sovereign learns the principles laid out in *Leviathan*, then perhaps an end to the revolutions of states is possible. Hobbes then clarifies his position in a rather striking fashion: the problem is not only that the logics of the social covenant have not been discovered it is also that sovereigns have persistently failed to manifest the moral duties which their realization in practice is contingent upon. The blame does not lay primarily with the ideology or logics of the social covenant, but with the natural persons who have held sovereign power. Hobbes says so forthrightly: "I conclude therefore, that in the instruction of the people in the Essentiall Rights ... of Sovereignty, there is no difficulty, ... but what proceeds from his [the sovereign's] own fault[.]"⁸² What follows is a series of considerations of how the sovereign should and should not comport themselves.

Hobbes first turns to consider the impediments to having faith in one's sovereign. Although the discussions are cast in seemingly repressive teachings, they all subtly gesture towards a real concern with the character of the sovereign. For instance, Hobbes advises future sovereigns to disallow citizens from loving their neighbors' form of governments, as though this were a matter of instruction.⁸³ Hobbes advises sovereigns not to allow potent citizens undue popularity and honor, as honor would obfuscate their sovereigns' love,

79 Hobbes, *Leviathan*, 522.

80 Hobbes will return to this idea again in the *Review and Conclusion* (*Leviathan*, 1141).

81 Hobbes, *Leviathan*, 522.

82 Hobbes, *Leviathan*, 524.

83 Hobbes, *Leviathan*, 524–26.

indicating that the perception (and surely practice) of the sovereign's love for the people is politically important.⁸⁴ Hobbes advises rulers not to allow for public arguments regarding any aspects of the sovereign's power or to use "his Name irreverently";⁸⁵ he shortly thereafter writes that "But when the Sovereign himselfe is Popular; that is, reverenced and beloved of his People, there is no danger at all from the Popularity of a Subject."⁸⁶ Finally, Hobbes asserts that sovereigns should set aside a day for reminding subjects of the written laws,⁸⁷ despite the fact that he will shortly claim that the true intention of the law is always measured by sovereign actions.

Hobbes's discussion of the character of the sovereign continues, but he pauses to consider the institutions that promulgate seditious doctrine and how they can be used to promulgate doctrine conducive to peace. Hobbes's answer is that sovereigns should control the "Means, and Conduits"—primarily universities—that ideologically mediate popular perceptions of law and justice; however he simultaneously gestures towards the importance of the sovereign's own moral education. Hobbes writes,

They whom necessity, or covetousnesse keepeth attent on their trades, and labour; and they, on the other side, whom superfluity, or sloth carrieth after their sensuall pleasures, (which two sorts of men take up the greatest part of Man-kind,) being diverted from the deep meditation, which the learning of truth, not onely in the matter of *Naturall Justice*, but also of all other Sciences necessarily requireth, receive the Notions of their duty, chiefly from Divines in the Pulpit, and partly from such of their Neighbours, or familiar acquaintance, as having the Faculty of discoursing readily, and plausibly, seem wiser and better learned in the cases of Law, and Conscience, than themselves ... It is therefore manifest, that the Instruction of the people, dependeth wholly, on the right teaching of Youth in the Universities.⁸⁸

The passage is a widely discussed in the secondary literature, but its most curious aspect usually goes without note. For it is here that Hobbes once again mentions natural justice. Who, we could ask, are the people who "receive their Notions of Duty" from a study of "*Naturall Justice*"? All indications are that

84 Hobbes, *Leviathan*, 526.

85 Hobbes, *Leviathan*, 526.

86 Hobbes, *Leviathan*, 550.

87 Hobbes, *Leviathan*, 528.

88 Hobbes, *Leviathan*, 532 [italics added].

Hobbes is speaking of the person of the sovereign. Hobbes will later make this quite clear when he writes in the conclusion of Part II of *Leviathan* (which I will expand upon shortly) that “the Science of Naturall Justice, is the only Science necessary for Sovereigns, and their principall Ministers.” However, the discussion of natural justice also flows from Hobbes's aforementioned concern with the failures of all previous sovereigns. Certainly, it is a fleeting reference to natural justice—a more substantive discussion follows in Chapter XXXI—but it is again indicative of Hobbes's persistent concern with the character of the sovereign lawmaker.

Those concerns continue in the following paragraphs. Hobbes then returns to expressly addressing the importance of the sovereign's character and its relationship to the law's legitimacy as command. Reiterating his teaching to sovereigns in *Leviathan*, Hobbes again asserts the importance of equity required in the administration of law,⁸⁹ following which—speaking directly of the natural persons who bear the office of sovereignty—he writes that:

The honour of great Persons, is to be valued for their beneficence, and the aydes they give to men of inferior rank, or not at all. And the violences, oppressions, and injuries they do, are not extenuated, but aggravated by the greatneses of their persons; because they have least need to commit them.⁹⁰

The Latin version makes the point even more clearly: sovereigns like the barbaric and vainglorious biblical king Rehoboam and nobles like the “beggars” who back the Dutch revolt necessarily invite popular revolt.⁹¹

These considerations are finally brought to bear on the question of the legitimacy of the civil laws. All laws are just, but not all laws are good. Good laws, Hobbes writes, are those that are “*Needfull*, for the *Good of the People*, and withall *Perspicuous*.”⁹² Needful laws are laws put in place “not to bind the People from all Voluntary actions; but to direct and keep them in such a motion, as not to hurt themselves by their own impetuous desires, rashnesses, or

89 Hobbes, *Leviathan*, 534.

90 Hobbes, *Leviathan*, 536.

91 As Hobbes goes on to write “The common people should not be provoked even by kings; much less by fellow-citizens (however powerful they may be), lest the common people, while desiring to take its revenge on them, attack the commonwealth at the same time, because it did not prohibit their behaviour” (*Leviathan*, 536).

92 Hobbes, *Leviathan*, 540.

indiscretion.”⁹³ Following which, Hobbes writes that “Unnecessary Lawes are not good Lawes; but trapps for Mony: which where the right of Sovereign Power is acknowledged, are superfluous; and where it is not acknowledged, insufficient to defend the People.”⁹⁴ If the standard of good laws is not simply that they contain or are equivalent to the natural laws, what is the standard? One answer, Hobbes tells us, is to conceive the goodness of laws to be a function of their benefit to the sovereign, even though that law is not “Necessary for the People.”⁹⁵ Hobbes, however, rejects this claim, “For the good of the Sovereign and People, cannot be separated.”⁹⁶ Recall that “the good,” here, is neither the subjective egoism of the sovereign nor the objective egoism of human nature. It is something akin to “human flourishing.” Similarly, Hobbes writes that “It is a weak Sovereign, that has weak Subjects; and a weak People, whose Sovereign wanteth Power to rule them at his will.”⁹⁷

Hobbes concludes Chapter xxx with the third reference to natural justice. Hobbes notes that in the field of interstate affairs,

the same Law, that dictateth to men that have no Civil Government, what they ought to do, and what to avoyd in regard of one another, dictateth the same to Common-wealths, that is, to the Consciences of Sovereign Princes, and Sovereign Assemblies; there being no Court of *Naturall justice*, but in the Conscience onely.⁹⁸

The international stage is sometimes cast by scholars as affording Hobbes's sovereign the opportunity to display their terrific might—a type of mega-heuristic of the state of nature. But of the few reflections on international relations in *Leviathan*, there is only one passage that supports that interpretation.⁹⁹ Most are expressly critical of vaingloriously belligerent sovereigns. Instead, Hobbes describes the stage of international relations as a place for the possible

93 Hobbes, *Leviathan*, 540.

94 Hobbes, *Leviathan*, 540.

95 Hobbes, *Leviathan*, 540.

96 Hobbes, *Leviathan*, 540.

97 Hobbes, *Leviathan*, 540.

98 Hobbes, *Leviathan*, 552. There is a version of this claim found in *De Cive* as well, which would appear to contradict my argument (Hobbes, *De Cive*, 72–73). However, on closer examination, two crucial differences stand out. First, Hobbes does not write of natural justice (presumably for the reasons addressed already, namely that *De Cive* was written against the idea). He writes of natural law. Second, he is writing of the consciences of the ruled, not rulers.

99 Hobbes, *Leviathan*, 196.

enactment of the dictates of natural justice, not natural right. Anarchy is indeed what one makes of it, and Hobbes indicates that what one's sovereign makes of it is a test of their moral character.¹⁰⁰

Allow me now to address the counter-argument that Hobbes is merely referring to the justice of contracts when he uses the term "natural justice." The passage above decisively negates that counterargument (as does every other usage of natural justice in *Leviathan*). Natural justice in *Leviathan* always demarcates other-regarding and positive moral virtues (in contrast to the self-regarding nature of equity and the natural laws), and only speaks to the natural person of the sovereign (or their deputies), not judges, and not all humanity. By the same token, the consistency of handling, the stark difference in usage in *De Cive* and *Leviathan*, and the striking similarities between Hobbes's and Aristotle's use of the term, also negates the "slip of the pen" counterargument.

3.3 Chapter XXXI: *Natural Justice and Sovereign Virtue*

It would follow from my argument that there should be in *Leviathan* discussions regarding the role of virtue and natural justice in the maintenance of the political systems that house legal systems. This is exactly the topic Hobbes uses to close the second part of *Leviathan* in Chapter XXXI. More, in bringing his line of argument to an end, he also clarifies the functions of "faith" and "fidelity" and their role in mediating the powers of sovereigns and citizens.

Summarizing his claims regarding both natural and civil laws, Hobbes writes "That Subjects owe to Sovereigns, simple Obedience, in all things, wherein their obedience is not repugnant to the Lawes of God, I have sufficiently proved, in that which I have already written." Continuing, he writes:

There wants onely, for the entire knowledge of Civill duty, to know what are those Lawes of God. For without that, a man knows not, when he is commanded any thing by the Civill Power, whether it be contrary to the Law of God, or not: and so, either by too much civill obedience, offends the Divine Majesty, or through feare of offending God, transgresses the commandements of the Common-wealth. To avoyd both these Rocks, it is necessary to know what are the Lawes Divine.¹⁰¹

¹⁰⁰ To use Alexander Wendt's phrase (but of course coming to a radically different understanding of Hobbes), "Anarchy Is What States Make of It: The Social Construction of Power Politics," *International Organization* 46, no. 2 (1992): 391–425. To recall one of Aristotle's favored proverbs, the "Office will reveal the man" (Aristotle, *Nicomachean Ethics*, 1130a).

¹⁰¹ Hobbes, *Leviathan*, 554.

Before considering the specific meaning of the claim, allow me to pause to reflect on its general significance. This claim is (again) incompatible with the orthodox interpretations of Hobbes's legal philosophy as it clearly signals a source of normativity outside of the natural and civil laws.

How does one "know what are the Lawes Divine"? The answer cannot be natural law. The "knowledge of all Law," Hobbes makes clear, "dependeth on the knowledge of Sovereign Power."¹⁰² The answer therefore must turn on how the sovereign's "power" makes eminent the "Lawes Divine." However, this knowledge clearly cannot be derived from sovereign command. Hence, the real question seems to turn on what kind of "knowledge" and what kind of "power" Hobbes is referring to when he speaks of subjects knowing the power of the sovereign.

Knowledge of divine law is contingent upon the representation and instantiation of those laws by the sovereign. God rules through the sovereign's words,¹⁰³ and "To rule by Words," Hobbes writes, "requires that such Words be manifestly made known."¹⁰⁴ God's words can be made manifest by way of "*Naturall Reason*, by *Revelation*, and by the *Voyce* of some *man*, to whom by the operation of Miracles, he *procureth credit* with the rest."¹⁰⁵ These aspects of God's power are heard by way of "*Right Reason*, *Sense Supernaturall*, and *Faith*."¹⁰⁶ Natural reason and right reason refer to the natural laws and the "naturall Duties of one man to another."¹⁰⁷ "*Sense Supernaturall*" and "*Revelation*" "have not been any Universall Lawes so given, because God speaketh not in that manner, but to particular persons, and to divers men divers things."¹⁰⁸ Hence, they are beyond the scope of legal philosophy. This leaves "*Faith*" in the "*Voyce* of some *man*, to whom by the operation of Miracles, he *procureth credit with the rest*."¹⁰⁹ Putting the natural laws and revelation to the side, "It remaineth therefore that we consider, what Praecepts are dictated to men, by their Naturall Reason onely, without other word of God, touching the Honour and Worship of the Divine Majesty."¹¹⁰

How, are natural honors and worship procured? "The End of Worship amongst men, is Power," Hobbes writes,

¹⁰² Hobbes, *Leviathan*, 554.

¹⁰³ Hobbes, *Leviathan*, 554.

¹⁰⁴ Hobbes, *Leviathan*, 556.

¹⁰⁵ Hobbes, *Leviathan*, 556 [some italics added].

¹⁰⁶ Hobbes, *Leviathan*, 560.

¹⁰⁷ Hobbes, *Leviathan*, 560.

¹⁰⁸ Hobbes, *Leviathan*, 556.

¹⁰⁹ Hobbes, *Leviathan*, 556 [some italics added].

¹¹⁰ Hobbes, *Leviathan*, 560.

For where a man seeth another worshipped, he supposeth him powerfull, and is the readier to obey him; which makes his Power greater. But God has no Ends: the worship we do him, proceeds from our duty, and is directed according to our capacity, by those rules of Honour, that Reason dictateth to be done by the weak to the more potent men, in hope of benefit, for fear of dammage, or in thankfulness for good already received by them.¹¹¹

On first assessment, these principles can all be reduced to the old dictum of "protection for obedience" to the sovereign. For despite all that has been said about faith and supernatural sense, the word of God takes definition only by way of sovereign power. It appears, then, that we have arrived at the *de facto* thesis as the normative basis for the civil laws. Indeed, later Hobbes writes that "It followeth, that those Attributes which the Sovereign ordaineth, in the Worship of God, for signes of Honour, ought to be taken and used for such, by private men in their publique Worship."¹¹² Citizens should observe state-ordained signs of worship.

There is, however, a crucial distinction. Hobbes *further* distinguishes between what is honorable for good citizens (artificial honors) and different in different commonwealths, and what is honorable for good humans (natural honors) and honorable everywhere.¹¹³ We need to separate the formal honors taking their definition from the office of the sovereign from the natural honors conferred on natural persons (including the natural person of the sovereign). It is natural honor that Hobbes is really interested in. Those natural honors are derived from character traits that cannot be conferred or circumscribed by artificial sovereign dictate or law. Moreover, they are character traits that universally and naturally command honor (obversely: vices that naturally command contumely).¹¹⁴

"Honour," Hobbes writes, "consisteth in the inward thought, and opinion of the Power, and Goodnesse of another."¹¹⁵ Worship is the act of signifying one's opinion regarding the power or goodness of another agent, which Hobbes tells

¹¹¹ Hobbes, *Leviathan*, 564.

¹¹² Hobbes, *Leviathan*, 570.

¹¹³ Cf. Aristotle, *Politics*, 1276b29–35.

¹¹⁴ Hobbes, *Leviathan*, 562.

¹¹⁵ Hobbes, *Leviathan*, 560. Hobbes's discussion is of natural honors due to "our Divine Sovereign" which are the same as those "natural Duties of one man to another." Hobbes does not speak specifically of the sovereign in this passage. However, since God is always represented by and in the sovereign, and the sovereign is also a natural person, it follows that the natural person of the sovereign is included in this discussion.

us is part of the meaning of the Latin term *cultus*.¹¹⁶ *Cultus* is fostered in two ways. One way is artificially by force and education, and it is in this sense that Hobbes speaks of his *Leviathan* being taught in the universities. The other way is naturally, “where mens wills are to be wrought to our purpose, not by Force, but by Compleasance, it signifieth as much as Courting, that is, a winning of favour by good offices.” This, Hobbes tells us, is the proper meaning of the term “worship.” Worship is rendered to those deserving of honor (*Love, Hope, and Fear*) as expressed in *Praise, Magnifying, and Blessing*. Hobbes writes that these are the people we call “Good, or Great” and who the people will obey.¹¹⁷

Hobbes confirms that these are character traits by putting yet more stress on the impossibility of artificially commanding such honors. Like his argument that the bravery of soldiers cannot be legislated, Hobbes implies that it is self-defeating for sovereigns to artificially force the recognition of natural honors. Enforced worship cannot reflect the “words, or gestures” of the subject (which are shallow displays deployed out of fear).¹¹⁸ Instead, the measure of enforced honor is the spectacle of obedience, and implies no positive endorsement. Enforced honors amount to sovereign self-worship “because a signe is not a signe to him that giveth it, but to him to whom it is made; that is, to the spectator.”¹¹⁹ It is the height of vainglory: a false estimation of one’s own power bolstered by the hollow “flattery of others.”¹²⁰

If my thesis holds, there should be examples of both corrupt and virtuous sovereigns, as well as indications that their character has significant consequences for the perceived legitimacy of the civil laws. One expression of both sides of this critique is found in the concluding paragraphs of the first half of *Leviathan*, first in a discussion of the “natural punishment” brought upon corrupt sovereigns, and then in a discussion of natural justice and the future sovereign who will found a new regime.¹²¹

Regarding natural punishment, Hobbes writes that:

There is no action of man in this life, that is not the beginning of so long a chayn of Consequences, as no humane Providence, is high enough, to give a man a prospect to the end. And in this Chayn, there are linked

116 Hobbes, *Leviathan*, 560.

117 Hobbes, *Leviathan*, 562.

118 Hobbes, *Leviathan*, 562.

119 Hobbes, *Leviathan*, 562.

120 Hobbes, *Leviathan*, 88.

121 My interpretation of this passage is influenced by and indebted to Craig, *Platonic Leviathan*, Chap. 15.

together both pleasing and unpleasing events; in such manner, as he that will do any thing for his pleasure, must engage himselfe to suffer all the pains annexed to it; and these pains, are the Naturall Punishments of those actions, which are the beginning of more Harme than Good. And hereby it comes to passe, that Intemperance, is naturally punished with Diseases; Rashnesse, with Mischances; Injustice, with the Violence of Enemies; Pride, with Ruine; Cowardise, with Oppression; Negligent government of Princes, with Rebellion; and Rebellion, with Slaughter. For seeing Punishments are consequent to the breach of Lawes; Naturall Punishments must be naturally consequent to the breach of the Lawes of Nature; and therefore follow them as their naturall, not arbitrary, effects.¹²²

Hobbes had already announced that this discussion concerns the honors sanctioned by the sovereign.¹²³ Nevertheless, at first glance, these vices and the natural punishments that follow could be taken as a general statement, not only one pertaining to Hobbes's advice to sovereigns. However, on closer examination Hobbes's concern does seem to be with the ramifications for sovereigns specifically. Clearly, sovereign negligence alone could be naturally punished with rebellion and slaughter. But the other vices also appear geared to sovereigns in particular. Consider the injustice that is punished by the violence of enemies. Recall, Hobbes is speaking here of what he had earlier called the "Justice of Manners" where "Justice is called a Vertue; and Injustice a Vice."¹²⁴ The question is: what kind of agent could be subject to the violence of enemies because of some personal vice? It does not seem to pertain to all agents in the state of war as Hobbes had already indicated that force and fraud were cardinal virtues in war. Moreover, it could not be subjects in a state, since states are only legitimate to the extent that they fend off the violence of enemies, no matter if that violence stems from vice. It seems that sovereigns alone are agents who could act unjustly and suffer thereby the violence of enemies (and, indeed we have seen examples of this already). Similarly, pride that begets ruin seems to be a sovereign-specific concern for much the same reason. The "King of the proud" rules over prideful people; not by eliminating pride, but by corralling and directing pride in a way that does not bring ruin. Certainly, some subjects will continue to be ruined by pride. However, the monarch alone is left to her own devices to temper pride and rule virtuously without the banisters of law to guide them. The discussion of cowardice also appears geared

122 Hobbes, *Leviathan*, 572. Cf. Aristotle, *Politics*, 1287a28–32.

123 Hobbes, *Leviathan*, 570.

124 Hobbes, *Leviathan*, 228.

towards sovereigns. Indeed, Hobbes had earlier stated that cowardice was a natural response to war stating that “there is allowance to be made for naturall timorousnesse”¹²⁵ in some citizens. Hobbes seems to be saying that no such allowance is made for the person of the sovereign. Even the discussion of “rashness” is indicative of the sovereign-specific concerns at hand. Recall, Hobbes had defined the purpose of the law as a tool for “to direct and keep them [citizens] in such a motion, as not to hurt themselves by their own impetuous desires, rashnesse, or indiscretions.”¹²⁶ Again, the sovereign alone stands outside of the law and it follows that the sovereign needs to be personally vigilant of the ill effects that follow from rashness. “Intemperance” looks like an exception, until we recall that Chapters XXIX through XXXI are styled by Hobbes as surveys of the diseases that afflict the artificial person of the commonwealth. In sum, rash, pompous, iniquitous, prideful, and pusillanimous leaders—those who “will do any thing for his pleasure”—are naturally punished with regime collapse. Hobbes’s ideal sovereign is a patently un-Hobbesian agent who must repress every egoistic vice.

Hobbes also speaks of virtuous sovereigns, and it is on this point that he brings Part II to a close, while also referencing natural justice for the fourth time:

And now, considering how different this Doctrine is, from the Practise of the greatest part of the world, especially of these Western parts, that have received their Morall learning from *Rome*, and *Athens*; and how much depth of Morall Philosophy is required, in them that have the Administration of the Sovereign Power; I am at the point of believing this my labour, as uselesse, as the Common-wealth of *Plato*; For he also is of opinion that it is impossible for the disorders of State, and change of Governments by Civill Warre, ever to be taken away, till Sovereigns be Philosophers. But when I consider again, that the Science of Naturall Justice, is the only Science necessary for Sovereigns, and their principall Ministers ... and that neither *Plato*, nor any other Philosopher hitherto, hath put into order, and sufficiently, or probably proved all the Theoremes of Morall doctrine, that men may learn thereby, both how to govern and how to obey[.]¹²⁷

Here, Hobbes neatly summarizes his essential argument, and the argument that I am trying to defend: there will be no end to the revolution of regimes, to

125 Hobbes, *Leviathan*, 338.

126 Hobbes, *Leviathan*, 540.

127 Hobbes, *Leviathan*, 574. Cf. Aristotle, *Politics*, 1288a26–9.

war, until the natural person administering sovereign power engages deeply in the study of moral philosophy. The object of that study is not found in Plato or the metaphysical interpolations of Aristotle promulgated by the church. Instead, it is found in the science of natural justice, in virtue ethics. Aristotle wrote that this sort of ruler could “*reasonably be regarded as a god among human beings*.”¹²⁸ Hobbes called this sort of ruler a “*Mortall God*,”¹²⁹ and concludes by looking forward to a time when the cyclical revolution of regimes would be brought to an end by exactly such a person.

4 Conclusion

I have argued that in *Leviathan*, Hobbes appropriates and redeploys Aristotle's understanding of virtue ethics when he writes of natural justice. Concurrently, I have argued that Hobbes's new attentiveness in *Leviathan* to the virtues of the sovereign has significant bearing on his legal philosophy. Specifically, I have tried to show that the primordial political foundation of Hobbes's legal philosophy is neither command (broadly understood) nor natural law (or any conjunction of the two). Instead, both are grounded on the instantiation of great virtue in the natural person of the sovereign. In the routine application of law, this connection need not be overt (indeed, it needs to be implicit and denied as a public doctrine). However, as the case of bad laws in Hobbes makes clear, sovereign vice (and conversely by extension, virtue) does inform the people's perception of the commander's and, by proxy, the law's legitimacy. Furthermore, in moments of emergency, the usually subtle dynamic between legal regimes, legal norms, and the natural person of the sovereign becomes foregrounded. Then, the functioning of natural laws and natural justice are realized as dynamic. It is a complex legal/philosophical dynamic, but there is a clear order to it.

This complexity is why Hobbes often appears to be defending contradictory claims regarding the nature of law. My arguments have not attempted to dispel these contradictions. Indeed, I believe that one of the strengths of this argument is in demonstrating that the appearance of conflict between competing critiques of Hobbes's legal philosophy can be synthesized by the idea of natural justice. Once these claims are understood in their broader legal-political context, one need not commit to one at the exclusion of another. These arguments are not celebrated in *Leviathan* because they invite tumult

¹²⁸ Aristotle, *Politics*, 1284a10 [italics added].

¹²⁹ Hobbes, *Leviathan*, 260.

either by the vainglorious few, who wrongly see themselves as eminent individuals, or by the many, because they dampen the rhetorical or ideological thrust of the doctrine of obedience. However, in the legal and political life of a regime, Hobbes is equally clear that these questions—of natural obligation and natural justice—must be of singular concern to the natural person bearing the office of the sovereign and the burden of rule.